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In re Application of
STRUMILLO DJACZENKO, Maria *et al*
Application No.: 10/048,235
PCT No.: PCT/IT00/00309
Int. Filing Date: 21 July 2000
Priority Date: 21 July 1999
Attorney Docket No.: 6584
For: PHARMACEUTICAL COMPOSITION
FOR TOPICAL APPLICATION, USES
AND PROCESS FOR ...

**DECISION
ON PAPERS FILED
UNDER 37 CFR 1.42**

This decision is in response to the declaration filed on 19 August 2002 which is treated as a submission under 37 CFR 1.42.

BACKGROUND

On 11 April 2002, a Notification of Missing Requirements was mailed indicating that a declaration in compliance with 37 CFR 1.497(a) and (b) and a surcharge fee of \$65.00 pursuant to 37 CFR 1.492(e) was required. A two-month time limit was set for response with extensions of time available pursuant to 37 CFR 1.136(a).

On 19 August 2002, applicants filed a declaration signed by two of the three listed co-inventors and by the heiress of deceased co-inventor, Wiktor Djaczenko, a surcharge fee of \$65.00, and a two-month extension and a \$200.00 extension fee.

DISCUSSION

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Applicants have furnished a declaration signed by Maria Strumillo Djaczenko, Danila Fava and Maria Strumillo Djaczenko as heiress of Wiktor Djaczenko who is deceased. However, this declaration does not meet all the requirements of 37 CFR 1.497(a) and (b). 37 CFR 1.497(a)(3) requires that the citizenship of each inventor

(including any deceased inventor) must be listed on the declaration. 37 CFR 1.497(b)(2) also requires that the citizenship, residence, and last mailing addresses of the legal representative (or heirs) be recorded on the declaration. In this case, it appears that the required information for the heiress is provided but that the information of the deceased co-inventor, Wiktor Djaczenko is not.

Moreover, the declaration also does not comply with 37 CFR 1.63(c)(1) which requires the listing of the residence and mailing address of each co-inventor. 37 CFR 1.497(c) states that a supplemental declaration in compliance with 37 CFR 1.63 will be required in accordance with 37 CFR 1.67 if the declaration does not comply with 37 CFR 1.63. In this case, it appears that the required information for the heiress is provided but that the information of the deceased co-inventor is not.

CONCLUSION

For the reason discussed above, applicants' petition under 37 CFR 1.42 is **DISMISSED** without prejudice.

Applicants are required to provide an oath or declaration in compliance with 37 CFR 1.497(a) and (b) within a time limit of **TWO (2) MONTHS** from the mail date of this decision. Extension of time may be granted under 37 CFR 1.136.

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.


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